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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

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In re Application of :
P. Darbee et al :
Serial No. 07/990,854 : DECISION ON PETITION
Filed: December 11, 1992 :
Attorney Docket No. 92032 :

This is a decision on the petition filed February 11, 1993, requesting that the above-identified application be accorded a filing date of December 11, 1992.

On December 11, 1992, the application was deposited without an oath or declaration and without the application filing fee.

On January 15, 1993, Application Division mailed a letter requiring the names of all the inventors and stating that the filing date of the application would be the date of receipt of the inventors' names. The application filing fee was also required.

In response, on February 11, 1993, inter alia, the present petition, an authorization to charge counsel's deposit account for the requisite petition fee, a declaration and the surcharge, two (2) small entity statements and the small entity filing fee were filed. Petitioners argue that a copy of an unexecuted declaration was submitted on filing. Petitioners request that the application be accorded a filing date of December 11, 1992 and the petition fee be refunded.

U.S. practice has always required naming all the inventors on filing. However, since February 27, 1983, an application may be filed without the declaration, as was done in this case. Therefore in those instances where this procedure is followed, it becomes necessary to provide the names of all the inventors elsewhere in the application.

37 CFR 1.53(b) states, in part, that if all the names of the actual inventor or inventors are not supplied when the specification and any required drawing are filed, the application will not be given a filing date earlier than the date upon which the names are supplied unless a petition with the fee set forth in 37 CFR 1.17(i)(1) is filed which sets forth the reasons the delay in supplying the names should be excused.

A review of the record reveals that no unexecuted declaration deposited December 11, 1992, has been located among the

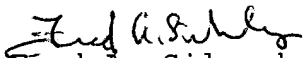
application papers. The best evidence of whether an unexecuted declaration was actually received by the Office on filing is a postcard receipt which itemizes and properly identifies that an unexecuted declaration was being submitted on filing. MPEP 503. However, no such postcard has been submitted. Absent such a postcard receipt indicating the submission of an unexecuted declaration, the Office must rely on the Official record.

In this application, the failure to supply the names of all of the inventors on filing has been deemed to be an inadvertent error. Therefore, on petition, the application may be accorded the date of deposit as the filing date. The petition fee will not be refunded since the present petition and petition fee were necessary in view of applicants' filing error.

To the extent indicated above, the petition is granted.

The application is being forwarded to the Office of Finance for charging the \$130.00 petition fee to counsel's deposit account No. 22-0355.

Thereafter, the application will be forwarded to Application Division for further processing with a filing date of December 11, 1992, using application papers filed December 11, 1992, the declaration filed February 11, 1993, and with the four (4) inventors named in the declaration.


Fred A. Silverberg
Special Program Examiner
Office of the A/C for Patents

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